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Azza K. Maghur

CARIM Analytic and Synthetic Notes 2009/33

Irregular Migration Series
Legal Module

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Euro-Mediterranean Consortium
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CARIM

The Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM) was created in February 2004 and has been financed by the European Commission. Until January 2007, it referred to part C - “*cooperation related to the social integration of immigrants issue, migration and free circulation of persons*” of the MEDA programme, i.e. the main financial instrument of the European Union to establish the Euro-Mediterranean Partnership. Since February 2007, CARIM has been funded as part of the AENEAS programme for technical and financial assistance to third countries in the areas of migration and asylum. The latter programme establishes a link between the external objectives of the European Union’s migration policy and its development policy. AENEAS aims at providing third countries with the assistance necessary to achieve, at different levels, a better management of migrant flows.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and predict migration in the North African and the Eastern Mediterranean Region (hereafter Region).

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The CARIM carries out the following activities:

- Mediterranean migration database;
- Research and publications;
- Meetings of academics;
- Meetings between experts and policy makers;
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The activities of CARIM cover three aspects of international migration in the Region: economic and demographic, legal, and socio-political.

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Abstract

Libya with its 4,000 km of land and 1,700 km of coast frontiers is one of Africa's main hubs for irregular migrants, especially those en route to Europe. A rich country with high oil revenues, Libya has, on its southern borders, poverty-stricken and unstable sub Saharan countries; and is an attractive destination for neighboring Arab states workers, seeking employment. Libyan foreign policy during the late eighties and the nineties, encouraged African and Arab irregular workers to come to Libya. Their presence was permissible. However, once Libya became an irregular migration hub and certain internal problems came to the surface relating to irregular migration, Libya discovered its lack of legal instruments to face this reality. Moreover, the reactivation of the Libyan private sector after more than a decade of a dominant public sector, led to disorder in the rapidly developing labour market. In labour market terms, Libyan legislative policy was reactive rather than strategic. The Libyan government, including the Ministry of Manpower, issued decisions to better organize the work market, while laws issued in the 1970s and 1980s are still in force and clogging up the system. Moreover, decisions dating from periods of Arab and African enthusiasm remain operative. All this led to discrepancies in Libyan legislation. Libya today is in need of strategic long-term legislative policy towards foreign workers in general, and those in the private sector in particular.

Résumé

Avec ses 4 000 kilomètres de frontières terrestres et 1 700 kilomètres de frontières côtières, la Libye est un pivot pour les migrants irréguliers, en particulier pour ceux en partance vers l'Europe. Pays riche du fait de ses revenus pétroliers, ses frontières méridionales sont bordées par des Etats subsahariens instables et enserrés dans la pauvreté, et elle constitue une destination attractive pour les travailleurs des pays arabes voisins à la recherche d'un emploi. La politique étrangère libyenne des années 80 et 90 encouragea les travailleurs irréguliers africains et arabes à venir dans le pays. Leur présence était tolérée. Cependant, lorsque la Libye devint un nœud de la migration irrégulière et que certains problèmes internes remontèrent à la surface en ce qui concerne la migration irrégulière, elle découvrit son manque d'instruments juridiques pour faire face à la réalité. De plus, la réactivation du secteur privé libyen après plus d'une décennie de domination du secteur public créa un désordre sur le marché du travail alors en développement rapide. En termes de marché du travail, la politique législative libyenne était plus réactive que stratégique. Des décisions visant une meilleure organisation du marché du travail ont été adoptées par le gouvernement libyen, y compris le ministère de la main d'œuvre, tandis que les lois des années 70 et 80 restent en vigueur et grèvent le système. Les décisions datant des périodes d'enthousiasme arabe et africain demeurent elles aussi opérantes. Tout ceci conduisit à des contradictions dans la législation libyenne. La Libye a aujourd'hui besoin d'une politique législative stratégique sur le long terme concernant les travailleurs étrangers en général, et ceux du secteur privé en particulier.

I. Introduction

Law no. 58 of 1970 related to labour, is the general law that governs the relationship between employees and employers in Libya. Despite all the ideological, political, economic, and social changes since 1970, very few amendments have been made to this law. Since 1978, and the publication of the Green Book, written by Colonel Ghathafi, the Libyan leader, Libya took a new road as far as relations to labour were concerned. The new ideology implied rapid changes in Libyan legislation. Relations between employer and employees were coloured with such slogans as “injust relationships” and “partners not workers” and cancellation of the 1st May celebrations.¹ What had previously been known as ‘labour law’ in law faculties became ‘partnership law’. And this new era of “partnership” saw the expansion of the public sector, and almost² all of the Libyan workforce became state employees. No private professional work was allowed.

Despite all these changes, Labour Law no. 58 of 1970 persisted. However, it was limited in its application to foreign workers and to those employees working either in commercial companies (foreign or national), and banks.

It is important to remember that Libya is a prosperous state, though its main economic source is oil, and its economy is considered an “économie de rente”. Libya is considered by neighboring states³ as one vast lake of oil. Libya’s very ambitious strategic development planning demanded not only foreign expertise, but also foreign manpower. Moreover, the 1969 revolution stated, in its first declaration in 11.12.1969, that one of its main objectives was Arab unity. This ideology and political ambitions more generally led, from the 1970s to the early 1980s,⁴ to several attempts to unify with other Arab States.⁵ An old dream of a Maghreb Union was revived at the end of the 1980s, and a union of the 5 Maghreb States was concluded on the 17th of February 1989 as the Maghreb Union Treaty. All this led to an open policy, enabling Arab neighbours to enter freely, reside and work in Libya. However, though since 1969 Libya pursued a foreign policy of brotherhood and unity with other, especially neighbouring Arab States, there were also military confrontations and reprisals against citizens of Libya (in foreign countries) and other Arab states (in Libya).

During the civil war in Chad in the early eighties, southern Libya witnessed a flux of Chadian refugees, who settled in southern Libyan cities such as Kofra and Sebha. Some were assimilated and obtained Libyan ID papers.

Due to allegations by Western countries that Libya had been complicit in acts of terrorism, UN sanctions were passed against Libya in 1992. Getting no support from other Arab states, Libya turned, instead, down an African path, and managed to obtain significant support in the African conference of Heads of State at Ouagadougou in 1998⁶. Libya, consequently, shifted its foreign policy down an African rather than an Arab route. Two major treaties were concluded based on Libyan initiatives: The Sahel-Sahara Treaty in 1998, and the African Union concluded in Sirte in 1999:

¹ Labour law no. 58 of 1970 was promulgated on the 1st of May 1970.

² Exception of manual workers

³ Those countries that receive substantial amounts of external economic rent, particularly oil rent on a regular basis: <http://students.washington.edu/hattar/yates.pdf>.

⁴ Libya restored its relationship with Egypt in 1989, after ten years of severed diplomatic ties. An agreement to this effect was concluded between Libya and Egypt, 3.12.1990.

⁵ Libya made several attempts at union with different Arab states: 1971 with Egypt and Syria, 1974 with Tunisia, 1980 with Syria, 1984 as the Arab African Union between Libya and Morocco.

⁶ <http://www.arabicnews.com/ansub/Daily/Day/981112/1998111244.html>.

- The Sahel-Sahara agreement (termed 'Cen-Sad') began with only six members.⁷ The objective of Cen-Sad as mentioned in article (1) were the removal of all restrictions on the integration of member countries through the adoption of necessary measures to ensure the free movement of citizens, capital and the interests of nationals of member states, right of establishment, ownership and exercise of economic activity and free trade and the movement of goods, commodities and services between member States.
- Libya was behind the conclusion of the African Union Treaty, which took place in the Libyan city of Sirte in 1999. The main goal was to establish new institutions replacing the old Organization of African Unity, in order to establish a future model for a United States of Africa.⁸ Libya is the current Head of the Union and is lobbying for an African Union government, a matter yet to be achieved.

This active role that Libya played, and continues to play towards full African integration, along with the treaties that Libya concluded with African countries, encouraged citizens of sub-Saharan and West African countries to come and reside in Libya. For them, Libya is rich with work opportunities and close to Europe: it can either be their final destination, or a temporary stopping place from which another journey to Europe can start.

With all these political changes, in addition to legal international and regional treaties, internal measures were necessary in order to absorb the waves of migrant workers coming on the back of pan Arabic or pan African Libyan policies.

With the arrival of workers of Arab or African origin, Labour Law no.58 of 1970 (governing labour relationships between an employee and his employer, laying down general rules, guarantees and conditions of ending the contractual relation, court procedures, etc.) proved ineffectual. This law does not refer to residency or the legal status of foreign workers in Libya, it only deals with work relationships regardless of the regularity of the worker's status and their presence in Libyan territory. This is governed by another series of laws, primarily Law no. 6 of 1987 and its amendments, relating to the organization of entry, residency and departure of foreign nationals from Libya.

Faced with the ineffectuality of labour laws, a new and changing situation on the ground for large numbers of irregular workers, the new phenomenon of illegal migration to the southern shores of Europe from its Mediterranean coast, coupled with EU pressure on Libya to take tougher measures to stop this, plus certain internal events in which clashes took place between Libyans and mainly African irregular workers,⁹ Libya decided to (re)organize its labour market. It did so on three levels by enacting a series of regulations (mainly decisions) amending relevant legislation, establishing a court and a prosecutor's office to combat illegal migration¹⁰ and entering into bilateral¹¹ agreements to confront irregular migration.

⁷ Parties to Cen-Sad are: Libya, Sudan, Chad, Mali, Niger, Burkina Faso, Benin, Togo, Ivory Coast, Morocco, Tunisia, Comoros Islands, Senegal, Djibouti, Egypt, Eritrea, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Kenya, Mauritania, Nigeria, Sierra Leone, Somalia, Tunisia, São Tomé and Príncipe.

⁸ African Union Government is still a long way off. http://news.xinhuanet.com/english/2009-02/04/content_10758921.htm .

⁹ Clashes took place in the city of Zawia, west of Tripoli, see *Human Rights Watch report 2006*.

¹⁰ "Illegal migration" is the term used in decision no. 10 of 2006. The court is competent in examining penal cases related to acts committed in violation of law no. 6 of 1987 relating to the organization of entry, residency and the departure of foreign nationals.

¹¹ Agreements with Italy and Egypt. The latest is the conclusion of the executive protocol with Italy in Tripoli in January 2009.

II. Labour legislation as related to non-national workers

A. Labour law no. 85 of 1970

The origins

Once Libya gained independence in 1951, it promulgated law 1962 relating to labour. After the revolution in 1969, Libya issued a new Labour Law no. 58 in 1970 which abrogated the previous law. Labour law no. 58 of 1970, is the law in force today, governing relations between employers and employees in Libya. This law was subject to limited amendments. In addition to this law, a specific regulation governing the employment of foreigners called the Regulation Of Employees With Contracts was issued in 1971. At the ministerial level, Libya had a Ministry for Labour and Social Affairs.

As mentioned earlier, Libya has been dominated by the public sector since 1979 and so labour laws had an only limited application. Nevertheless, the laws continued to be in force (having only been changed in some small ways)¹² and so this law continued to regulate the private sector when that sector was reactivated at the end of the 1990s.

This law, however, excludes from its application two important categories: housekeepers and farmworkers¹³.

As irregular workers in Libya are mainly unskilled and work in housekeeping and agriculture, the above mentioned law does not apply to them¹⁴.

It should also be mentioned that, in principle, the Labour Law of 1970 does not cover foreign workers' immigration status. It is limited to labour relations between employer and employee.

Labour law no. 58 of 1970 states that it covers all manpower working in Libya based on a contract regardless of their nationality. It deals with foreign workers in chapter 3, which is entitled "the employment of foreigners"¹⁵, in which it stipulates the necessity of obtaining a work permit, and gives the Libyan cabinet the authority to lay down the minimum wage for foreign nationals in the work place. The said law contains certain penalties in case of breach of its articles, in the case dealing with foreign workers, a penalty of imprisonment that does not exceed 3 months and/or a fine of 50 dinars¹⁶.

Though a work permit is demanded by this law, penalties imposed in breach of such a permit and other offences related to foreign nationals are light: they, in fact, give the courts a choice between a fine or imprisonment. It does not, in principle, abrogate the contract itself and is limited to such penalties.

Though we agree with the above point that there is no relation between the contract and the employee's residency status, the Libyan Supreme Court issued a contrary opinion that rendered the contract null and void in cases of the absence of a work permit. This opinion jeopardizes employees' rights under the current law for Libyan Supreme Court judgments are considered precedents and have the force of law¹⁷.

¹² The main changes are the abrogation of end of work indemnity, and the criminalization of the right to strike

¹³ Article 1 of labour law no. 58 of 1970.

¹⁴ ILO observations in 2004, 2006 related to the application of convention n°. 118. See paper prepared by D. PERRIN, « Aspects juridiques de la migration circulaire dans l'espace euro-méditerranéen. Le cas de la Libye », *ASN 2008/23*, www.carim.org, p.5.

¹⁵ Third chapter: articles 13, 14, 15

¹⁶ Article 156.

¹⁷ Judgment no. 1/26 K, 24th of Nov. 1982. Though the judgment annulled the contract, it stated that the employee can bring a case against the employer, not based on the contract, but on civil responsibility and ask for compensation.

On this point, the new draft labour law was clear and inserted an article that states that in case of concluding a contract with a non-Libyan without the required permission, the contract becomes void. Therefore, the new draft labour law forged a clear relationship between the legal status of a foreign worker and his or her contract.

The new turn

The “work market ” in Libya changed radically, first with the virtual elimination of the private sector then with its reactivation and later with the adoption of an open door policy for migrants of Arab or African origin. Given this it should be apparent that the main labour law in force was too loose to absorb and regulate the rush in irregular workers. Moreover, this law was made to govern labour relationship regardless of the legal status of the employee. It follows that it does not cover the new tendency of using Libyan territory as a transit for other “marché de travail” in southern Europe, a phenomenon that Libya neither expected, nor was prepared for.

Facing this lack of sufficient legal rules to cover new labour situations on the ground, legislation in Libya took a new turn. This involved a limited use of the laws, and a more extensive use of decisions to regulate irregular workers: though, as we will see below, with limited incentives and complicated procedures.

To deal with the influx of irregular migrants since 1988, the Executive Branch i.e. the General People’s Committee (GPC) and, at a later stage, the Ministry of Manpower, Training and Empowerment (MMTE), took active roles in issuing decisions for the purpose of organization, laying down rules to regulate the current labour market and also to limit the influx of new waves of irregular workers.

B. Laws and decisions governing the labour market (1980-2007): filling the gaps in the Labour law?

In the mid 1980s, and afterwards Libya nationalized its private sector and massively expanded its public sector, the Ministry of Labour ceased to exist, and a Ministry of Public Service was established in its stead. At that time, the Libyan administration promulgated four consecutive decisions, putting an end to the employment of foreign nationals working in both the public or the diminished private sector. It is of interest to note that all four decisions tie the end of employment with the end of residency. It is also significant that in all decisions – in contrast to subsequent legislation – ‘foreigner’ means non-Libyan and included other Arabs.

Though, after the 1969 Revolution, Libya pursued a policy of pan Arabism, its relations with neighboring Arab states were not perfect. Nevertheless, at the end of the 1980s, Libya promulgated legislation by which it conferred a special status on Arabs. Law no. 10 of 1989 indicates that all Arabs have the right to enter and reside in Libya, and that those who reside in Libya the same rights and obligations as Libyans. Moreover, decision no. 456 of 1988 allowed Arabs to obtain permits to establish industrial, trade and manual businesses permitted under Libyan legislation. It is important to note that the above mentioned legislation connected rights with obligations which means that except for the right to enter Libya without a visa, other rights, including the right to work are connected to obligations including that of service in the Libyan military.

Decision no. 602 of 1988 indicates clearly that Arabs have priority over other foreign nationals when it comes to certain jobs. It is also clear from the title that it was issued through political directives to encourage Arabs to reside and work in Libya.

Decision no. 238 of 1989 represents a tendency to tighten up on foreign employment. Foreign manpower, in this decision, is considered as non Arab, and gives labour priority to Arabs. It indicates a tendency towards restricting the hiring of non-Arab employees. The decision though keeps all

contracts in force unchanged and prohibits all public work establishments from hiring foreign workers without prior permission from the Ministry of Public Service.

Since 1988, a turning point with regard to employment was taken, and a new lot of privileges were accorded to Arabs in Libya. In 1988, the GPC issued decision no. 456 relating to Arab rights in Libya. A decision of only three articles, it recognizes that all Arabs residing in Libya have the rights enjoyed by Libyans, including the right to reside, to travel in and out of Libya, to exercise a private business, to acquire properties and the obligation of national service. Later the GPC issued decision no. 602 of 1988 related to the organization of procedures in relation to the use of incoming Arab workers based on unity directives. In this decision, the public sector fields are limited, but there were no restrictions for the private sector.

In 1989, the Libyan government started the year with two decisions and a law. The first is GPC decision no. 238 of 1989 dated 1.3.1989, relating to the importation of foreign manpower; and the second was issued a day later (GPC no. 260 of 1989) relating to certain regulations with regard to employment. The first decision is related to two categories of workers: ‘foreigners’ and ‘Arabs’. It stipulates that no foreign national should be hired in any function¹⁸ or for any job unless permission is given by the Ministry of Public Service, for jobs that cannot be filled by an Arab. The next day decision no. 260 of 1989, with no reference to the previous decision, dealt with three categories: ‘Libyans’, ‘Arabs’ and ‘non-Arab foreign nationals’. It gave priority to Libyans in filling public sector vacancies; however it restricts all job assignment for both Libyans and others through one channel, the Ministry of Public Service. Again in article 3 of the said decision, it repeats that incoming Arab workers have all rights allocated to Libyans, and can obtain, if they so desire, permanent residency with equal salaries in public sector as Libyans. It also states that non-Arab foreign nationals in Libya can only work after obtaining permission from the Ministry of Public Service.

However, in 9.3.1989, Libya issued Law no. 10 of 1989 relating to the rights and obligations of Arabs, in which it states that all Arabs have the right to enter and reside in Libya, and that they all have the rights and obligations of Libyans. In 1990, the GPC issued decision no. 49 of 1990 relating to restrictions in organizing the rights and obligations of Arabs in Libya. According to this decision, a permanent or temporary Arab resident in Libya can acquire all the rights accorded to Libyans, including the right of work, ownership, free education and health services, political rights, and others mentioned in the decision. However, it sets as a condition, that the person *should accept, in writing, that he or she wishes to be treated as a Libyan* in order to enjoy all the rights and facilities indicated in the decision. The law also indicates that in such a case the immigrant is under an obligation to perform, as any Libyan, military service and be part of the Libyan people’s army. He is also under the obligation to abide by all laws in force applied to Libyans¹⁹. The decision also differentiates between permanent and temporary residency, and sets down special and simplified procedures, within the immigration department, for Arabs to obtain permanent residency. It also stipulates that a permanent resident card is accorded to those who apply for it, provided that the person resides there continually for a whole year, and that this card is also accorded to members of his/her family residing in Libya. Palestinians are not allowed by this decision to acquire properties.

At the end of 1990 and the beginning of 1991, with the gradual reactivation of the Libyan private sector, after a decade of relative inoperation, there was a demand for foreign workers, especially those from neighboring Arab states. New shops, private companies, factories, urgently needed labour. As Libya had a heavily employed public sector, and so as to avoid further employment in this sector, the GPC issued several decisions prohibiting non-Libyans from working in the public sector, with limited

¹⁸ “Function” is a term normally given to a public sector job.

¹⁹ Article 15, of the said decision.

exceptions and centralized procedures for certain jobs²⁰. The idea was to restrict non-national workers within the public sector. However, and as there are always exceptions to general rules, the GPC issued decision no. 195 of 1991 related to rules with regard to the hiring of non-nationals in public-sector companies and their establishment in the fields of construction and building fields.

In 1993, with the heavy burden of the public sector and with the education field the most populated public sector²¹, the GPC issued decision no. 364 of 1993, applying certain rules to the lay off of workers in the public administration. This decision put an end to contracts concluded with non-Libyans in certain subjects in primary education. Non-Libyans in the education field are mainly Arab teachers, as education in Libya at that time was entirely in Arabic.

In 2001, GPC decision no. 403 of 2001 was issued with regard to incoming African manpower. The decision set out certain conditions: limitation of work to the fields of agriculture, building and cleaning; a medical certificate to show that the worker is free of any illnesses and without viruses (*sic*)²²; registration at the MMTE; a card called 'Non-transferable Labour Card' from the immigration authority that allows the immigrant to work. It is of interest that the policy previously pursued to reduce and limit the presence of foreign workers in the public sector was not preserved in this decision. Indeed, this decision allows Africans to work in the public sector. It also indicates that African manpower will be treated as temporary workers when it comes to wages. However it excludes those workers of African origin brought in officially from abroad. The decision indicated that African workers coming from abroad will have priority, and that the employer should cover their medical expenses and provide them with group accommodation.

In 2004, a couple of decisions were issued. GPC decision no. 238 of 2004 relating to the organization of the employment of non-nationals. Then GPC decision no. 241 of 2004, relating to the prohibition of using non-nationals in the public administration²³.

The GPC issued decision no.1 of 2004, relating to restrictions and rules for the importation and hiring of non-national manpower. It refers to decisions related to Arabs and African workers in the preamble. It mainly shows procedures on how to bring non-national workers into the country. It states that any job filled by a non-national is considered to be a vacancy, and that no permission should be granted to either import or hire any non-national, except for jobs mentioned in a list attached to this decision. It does, however, allow, in the interest of the public, for contracts to be concluded with non-nationals in jobs which are not listed, with permission from the minister of the MMTE. It also refers to the principle of reciprocity, and to international and bilateral agreements which Libya has signed and considers this an exception for hiring non-nationals²⁴. Moreover, it accords priority for the import of non-national workers to those originating from states with which Libya has international or bilateral treaties, in accordance with these treaties²⁵. In this regard, it is clear that this decision allows equality amongst all foreign workers regardless of their origin, and requires residency not through the competent authority (Immigration), but through the MMTE. It also contains some guarantees for non-national workers by requiring that employers pay 50% of the worker's salary, until work papers are completed, and that they provide the worker with provisional accommodation, until convenient accommodation is found²⁶. Though it mentions Arab workers, unlike previous decisions it does not

²⁰ For example, doctors and paramedics, who are governed by GPC decision no. 510 of 1990 relating to regulations on hiring employees with contracts in medical and paramedical jobs in the public sector.

²¹ This particular sector suffered a year ago from a serious lay off of thousands of Libyan teachers, mostly females, with a plan to integrate them into the private sector within three years.

²² Article 3.

²³ These two decisions could not be found.

²⁴ Article 5.

²⁵ Article 6.

²⁶ Article 21.

confer any special status on them, and, like other foreign workers, they must fulfill certain conditions²⁷.

Decision no.14 of 2005, issued by the MMTE stipulates that a non-national is not permitted to be hired in shops, restaurants, and other “productive and service places”²⁸.

Decision no. 91 of 2006 was issued to regulate work in both public and private sectors in general. The decision tightened employment for both Libyans and foreigners without distinction, and indicated that any employee should be appointed through the MMTE. For the first time the term “legal entry”²⁹ was used as a condition to employ a foreign worker, in addition to providing a medical certificate showing that the worker is free of contagious diseases issued by a Libyan governmental medical centre.

The GPC issued decision no. 74 of 2006, relating to certain rules in connection with the competence of the MMTE, which determined within its vast competence “*the organization of foreign workers’ affairs, issuing the required permissions for importing and contracting with them in accordance with the relevant legislation*”³⁰.

In 2007, GPC decision no. 98 of 2007 was issued. This decision, for the first time, ties work together with residency. In its preamble a reference was made to international and bilateral treaties. This decision shifts labour policy in Libya towards international and bilateral treaties. It only recognizes foreign workers coming from countries with which Libya has a treaty. It deals with foreign nationals already in Libya and urges private and public sector alike to conclude contracts with them in jobs other than those reserved for Libyans. It also sets two conditions: a health certificate and a resident permit issued by the immigration authority. It also laid down procedures for workers abroad who Libya’s private or public sectors are intending to hire. To tighten up such procedures, it indicates that any employment for a foreign worker (abroad at the time of hiring) can be organized through the MMTE, and with a suitable contract the worker can obtain residency for a limited period. This decision for the first time refers to foreigners coming from abroad and seeking work in Libya. It allows them to obtain a three-months’ visa. However, if the three months elapse without work being obtained, the foreign work seeker must leave the country. Failure to do so will result in expulsion under the seeker’s expense. It also indicates that medical care and education for foreign nationals are to be charged for. The article relating to medical and education services was amended by decision no. 612 of 2007, in which it was decided to admit non-Libyans to public schools in remote areas where there are no private schools, though they have to pay 800LD per year.

After four months of issuing decision no. 98 of 2007, the MMTP issued decision no. 20 of 2007, which stresses that it is illegal to hire any incoming foreign manpower without concluding a contract with him/her, in accordance with labour law³¹. It also instructed that all foreign workers be submitted to a medical examination and that they obtain a health card. It set a closing date, the end of July, to regulate the status of foreign workers in Libya, in accordance with “this decision and that of labour law, and of the law related to entry, residency, and departure from Libya”.

Again in 2007, the MMTE issued decision no. 9 of 2007 relating to ending the use of labour cards in accordance with its previous decision no. 1 of 2004.

²⁷ These conditions are: registration of the worker with the relevant Consulate in Libya, “regularize their residency” with the Libyan authority in accordance with restrictions related to the “empowerment of incoming manpower workers”.

²⁸ Article1.

²⁹ Article3.

³⁰ Article 4/31.

³¹ Article 1. However, in article 2 of the same decision it repeats the prohibition of hiring or continuing to hire any foreign worker “without concluding a labour contract that should be stamped by the relevant authorities”.

In 23.3.2007, and due to the wide authority given to the MMTE by GPC decision no. 74 of 2006³², the GPC issued a letter to both the MMTE and the Ministry of General Security. This letter dealt with two matters:

1. Labour restrictions. It laid down more conditions with regard to foreign workers such as:
 - The maximum imported foreign workforce in any entity, private or public, should not exceed 70% (the other 30% must be Libyan).
 - The employer is responsible for his foreign workers, their residency procedures, taxes and services costs.
2. The same letter put an end to the overlap between the MMTE and the Ministry of General Security, in questions of providing permits to import and conclude contracts with foreign workers. The GPC declared in this letter that the Ministry of General Security is to be in charge of issuing permits to bring in foreign workers.

Although in 2007 a Libyan official declared that Libya will require visas for all foreign nationals including Arabs³³, the government hastily denied this. Another official clearly stated that Libya is taking measures to organize the status of foreign workers in their interests and so as to guarantee their rights, including contracts and social and medical securities³⁴. Libya is still today unable to control and organize irregular migrants in its labour market. Arabs continue to enjoy a special status in Libya, though much less than before.

Since the beginning of 2009, the MMTE has been using a new method to publicize measures to be followed by employers especially those of foreign companies and in the private sector, measures that appear in local newspapers and on its website³⁵. The first one is a warning not to employ foreign nationals in jobs other than those listed in its previous decision. It also urges all Libyans who are hiring irregular housekeepers to legalize their status free of charge. Then finally there is the new policy prohibiting the hiring of retired people, in both foreign and public sector companies and establishments: employers must, instead, hire young Libyans seeking employment.

C. A Draft new labour law (2008)

Since March 2008, the General People's Committee issued a decision to revise all Libyan laws, including labour laws. A committee was created and a draft law was prepared, and published in a Libyan newspaper³⁶ and on Libyan government web sites³⁷. The proposed law contained major changes. Those related to this study are the following:

1. The inclusion of two categories excluded in the current law, namely housekeepers and farm workers, therefore these categories are covered by the proposed labour law.
2. The draft law contains a whole new chapter (chapter 4) relating to non-Libyan workers. It stipulates that non-Libyan workers can only work after obtaining a permit from the competent authority. Failing to obtain a permit would result in the contract being rescinded. However, the employer will be responsible for all rights to be found in such a contract. In a way this would guarantee the employee's rights, though he would lose his job.

³² The decision contains the 44 areas of authority of the MMTE.

³³ Declaration attributed to the Libyan General Security minister, in the conference of Arab Ministers of Interior. http://www.swissinfo.org/ara/arabic_international/detail.html?siteSect=141&sid=7711761&cKey=1176474301000&ty=st.

³⁴ Declaration of Libyan Foreign Minister in Rabat Feb 2007. <http://www.philadelphia.com/News.asp?ID=356>.

³⁵ <http://www.smpt.gov.ly/>.

³⁶ 'Oea' newspaper.

³⁷ www.Oealibya.com.

3. It also mentions that the competent authority has the right to determine the percentage of non-Libyan workers in every labour sector; moreover it has the right to prohibit foreign workers from certain sectors.
4. It seems that this draft law is close to the current labour law, but that it has little to do with the other current legislation, such as the several GPC and MMTE decisions on employment. It has no influence whatsoever on the other legislation mentioned below, enacted by the GPC and/or the MMTE currently in force.
5. This draft law, is, as its name implies still a draft, and not yet in force.

III. Analytical reading of labour legislation

A. Legal contradictions

As stated above, the only law that governs labour in Libya is law no. 58 of 1970. Since then, no new laws have been promulgated, with the exception of law no. 10 of 1989 relating to Arabs, which is both short in form³⁸ and short on details.

This gap in legislation was filled by a series of decisions issued by either the GPC or the MMTE to organize or regulate the complicated work situation on the ground.

The very rapidity of decision manufacturing with relation to the labour market has led to certain important contradictions within the labour law. Though laws can be contradicted, however, in accordance with the general rules of Libyan Civil Code, in case of contradictions between laws, the later one prevails.

On the other hand, Libyan Civil Code lays down an important principle that says lower legislation (such as a decision) should not contradict a more important form of legislation such as a law. Therefore, the fact that some decisions contradict law no 58 of 1970 is considered an unhealthy legal environment in Labour issues.

Another fact to be mentioned is the rare reference to labour law in the operative articles of these decisions. With the exception of MMTE decision no. 20 of 2007³⁹, all other decisions were mute on labour law. In other decisions, labour law is mentioned in their preamble. This protective policy went too far, contradicting the Labour law in force⁴⁰.

Certain contradictions can be seen in the following: MMTE decision no. 14 of 2005, in which it enables committees in charge of inspection to end the work of foreign nationals found in jobs reserved for Libyans, and to replace them with a Libyan. This is in flagrant contradiction of Libyan labour law, and the Libyan Civil Code, in which a work relationship is based on mutual consent.

MMTE decision no. 1 of 2004, relating to restrictions and rules of importing and using non-national manpower, speaks about the right to “end of contract indemnity”. This right was cancelled more than two decades ago by law no. 7 of 1983⁴¹ amending law no. 58 of 1970⁴². Rather than

³⁸ It consists of 4 articles only. Law no 58 of 1970 consists of 168 articles.

³⁹ Labour law was mentioned twice in this decision.

⁴⁰ In the MMTE decision no. 14 of 2005, in which it allowed committees in charge of inspection to end the work of a foreigner found in a reserved jobs for Libyans, and replace said worker with a Libyan job seeker. This is in flagrant contradiction with Libyan labour law, where the work relationship is based on mutual consent.

⁴¹ This law is entitled: The cancellation of end of contract indemnity as mentioned in law no. 58 of 1970.

⁴² Law no. 58 of 1970 included articles relating to the end of contract indemnity. Then in 1983, law no. 7 of 1983 was promulgated abrogating the system of end of work indemnity laid down in labour law no. 58 of 1970.

restoring end of work indemnity for all workers, Libyans and foreign nationals alike, by simply cancelling the current amendment to the labour law, the MMTE decision mentions this right for foreign nationals, whilst it was cancelled 20 years ago. Therefore, such an obligation is in contradiction of the labour law, and thus has no effect whatsoever.

Lately, the MMTE issued an announcement urging Libyan citizens who are hiring housekeepers to conclude work contracts with them, and provide copies to the ministry. As stated above, housekeepers are excluded from the application of Libyan labour law no. 58 of 1970, and, therefore, a work contract would not allow such category of worker to enter into the circle of labour law.

It is apparent from the large amount of dispersed legislation⁴³ that labour legislation reflects the direction of the Libyan administration *vis-a-vis* non-national labour. Legislation in this regard includes both laws and decisions promulgated by⁴⁴ the GPC, and later by the MMTE:

It appears from the collection of legislation that the relevant laws are three⁴⁵, though decisions issued by the GPC (Libyan cabinet), are roughly 27 in number. Therefore, we infer that the bulk of legislation are GPC decisions. Whereas decisions are easy to issue and amend, procedures to promulgate laws are more complicated as they can only be issued by the General Peoples Committee (Parliament) after a long process of debate within the basic people's committees.

As mentioned above, the "Labour Market" includes both Libyans and non-Libyans, and Libyan workers were pushed from the private to the public sector in 1979, then in early 90s back to the private sector. There was a policy of pushing public-sector employees out to the private sector, in particular in the education field⁴⁶. A number of Libyan public-sector workers went easily back to the private sector, especially those in liberal professions such as lawyers and doctors and those exercising commerce and services. Amazingly, Labour Law no. 58 of 1972 regulated such transmission in an efficient way. No changes were made in labour laws. This is not the case with economic and commercial laws, which underwent heavy changes and a series of new laws, regulations and GPC decisions⁴⁷ were issued to regulate the restoration of the private sector. However, due to a massive influx of irregular workers into Libya, Labour Law proved to be insufficient in organizing the new booming "marché de travail" after the restoration of the private sector.

Within the list of legislation, in particular decisions issued by the GPC and the MMTE, it appears that most relate to non-Libyans. Therefore, it can be concluded that the great preoccupation of the Libyan administration since 1988, has been the organization of irregular workers, which has brought up real problems and sometimes chaos.

Legislation in this regard are titled, and non-Libyan workers went under different terms. In the beginning Law no. 58 of 1970 used the term "foreigners". In a second stage in early 1980s, the term used was "non-nationals" associated with policies of Libyanizing jobs and reducing non-Libyans in the public sector in particular. Following the Libyan Arab brotherhood policy at the end of the 1980s,

⁴³ First of all, it was difficult to know all decisions issued by the GPC; and it was difficult to find them all, as not all are published in the official gazette, nor on the MMTE website. However we managed to collect most of these decisions.

⁴⁴ In 2007, the Minister of MTE, estimates foreign workers in Libya at around 700,000.
http://www.libyajeel.com/index.php?option=com_content&task=view&id=3673&Itemid=257.

⁴⁵ Labour law no. 58 of 1970; law no. 10 of 1989 related to rights and obligations of Arabs in Libya, Law no. 6 of 1987 related to the organization of entry, residency and the departure of foreigners from Libya.

⁴⁶ These people are considered to be surplus. Thousands of female teachers were considered as such and though they still receive their monthly salary, they are currently unemployed. Salary payment is envisaged for not more than three years, and a plan to integrate them into the private sector is still unclear.

⁴⁷ Though commercial law of 1953 is still in force, a series of other economic and commercial laws, regulations, and GPC decisions were promulgated.

the terms “Arab citizens”⁴⁸ and “incoming Arab workers”⁴⁹ were used, while non Arabs were “foreign manpower”⁵⁰ to differentiate them from Arabs. Another GPC decision⁵¹ used the terms “Libyans/Libyan Arabs”, “Arabs” and “foreigners”. The terms “nationals” and “incoming Arab workers”⁵² were also used, in addition to terms such as “Libyans” and “non-Libyans”⁵³.

Moreover, following Libya’s foreign-policy shift towards Africa “incoming Africans workers”⁵⁴ is now employed, to differentiate these workers from Arab and foreign workers, notwithstanding the fact that eight Arab countries (not including Libya) are African! Other terms used in recent years, starting in particular in the year 2004, include “non-nationals”⁵⁵, which means all foreign nationals regardless of their origins, Arabs, Africans or others. There is also the term “incoming workers”⁵⁶, and “incoming foreign workers”⁵⁷, which reflect the intention of putting all non-Libyan workers in the same pool, regardless of their origin.

Though, these are the only terms related to the form, it does reflect the tendency to deal with migrants either regular or irregular, and reflects the situation on the ground.

Example: when Libya followed an open-door policy towards Arabs, it used the term “Arab citizens and Arab incoming workers” to accord them a special status. However, when the term “African incoming workers” was used, it was in legislation issued years after when Libya shifted towards Africa, and mainly for the purpose of regulating and somehow containing the flux of migrants coming from sub-Saharan and West Africa. It also reflects the intention of not including Arab migrants within this African grouping.

More recently, when Libyan policy changed again in the face of the problem of irregular migrants, it went back to using the term “incoming workers”⁵⁸ and “incoming foreign workers”⁵⁹, generalizing the term that extends to all foreign workers regardless of their origin.

The reason behind issuing successive and differing labour legislation since 1998 is, in our opinion, a result of both the insufficiency of Labour law no. 58 of 1970 to regularize and govern the mass of irregular workers entering Libya and the rapid changes occurring in the labour market that need prompt legislation (decisions rather than laws).

⁴⁸ Law no. 10 of 1989 related to rights and obligations of Arabs in Libya.

⁴⁹ GPC decision no. 602 of 1988 related to the organization of procedures in relation to the use of incoming Arab workers based on unity directives.

⁵⁰ Decision issued by General People’s Committee no. 238 of 1989 related to the importation of foreign manpower. In this decision the only terms used are “Arabs” and “foreigners”.

⁵¹ GPC decision no. 260 of 1989 related to certain restrictions with regard to employment.

⁵² GPC decision no. 195 of 1991.

⁵³ GPC decision no. 364 of 1993.

⁵⁴ Decision issued by the General People’s Committee no. 403 of 2001 related to certain rules for hiring incoming African manpower.

⁵⁵ Though the term “non-national” was used in the early eighties, it has only been used in a systemic way in GPC decisions since 2004.

⁵⁶ Decision issued by the General People’s Committee no. 98 of 2007 related to regulations and mechanism organizing work and residency in Libya and other regulations.

⁵⁷ MMTE decision no. 20 of 2007 issued by the MMTE relating to certain rules on the organization of the importing of manpower.

⁵⁸ Latest GPC decision no. 98 of 2007 relating to regulations and mechanisms organizing work and residency in Libya and other regulations.

⁵⁹ Decision issued by the MMTE no. 20 of 2007 relating to certain rules on the organization of the bringing in and use of foreign manpower.

B. The Status of Arab workers in Libya

It is clear that since the revolution in 1969, Arabs have occupied a privileged status in Libya. In addition to several attempts at union, and regional agreements, a couple of bilateral agreements were concluded with neighboring Arab states in relation to the right of acquiring property in Libya⁶⁰. However, though the rights in these agreements are clear, certain articles contain reservations, such as the reference to internal rules, and the right of any party to abrogate the agreement. Both agreements indicate that it will enter into force once ratified and ratification documents are exchanged. Following the bilateral agreement with Egypt in 1990, the GPC issued decision no. 226 of 1992, in relation to rules concerning the purchase of buildings and farms in Libya by Egyptian nationals.

Though Arabs in general have a special status in Libya reflected in regional or bilateral treaties, Egyptians in particular enjoy a better status in Libya.⁶¹

Libya opened its doors wide to all Arabs in 1988, even before the restitution of the private sector. Libyan legislation in that regard took different shapes. In the early stage, in 1988, it was of a general and loose character⁶². Later on in the same year, other decisions of a more regularized nature concerning their presence⁶³ were introduced. It is also of interest to note that one law was promulgated in between three decisions related to Arabs, and was of general and limited content. The first talked only about rights⁶⁴, and then, in a later stage, it seems that a quick legislative move was needed to organize and restrict the labour market. One of the tools used to organize the labour market was semantic and thus ultimately ineffective. Defining an Arab citizen being “of Arab origin and not naturalized”, the person should “choose” Libya as his country of residence, and recognize and undertake all rights and obligations in writing. Such rules are of form and not of substance, and cannot, alone, organize an irregular labour market. This decision shows that the aim is to keep, in Libya, only those Arab workers who are willing to fully integrate. This integration, however, depended on the immigrant accepting all rights and obligations, and obtaining a permanent residency card. No plan whatsoever was deployed for the acquirement of Libyan nationality.

Though legislation related to Arabs repeatedly states that they enjoy equal rights to Libyans in general, in certain decisions, articles describing these rights such as the right to work, or establish a business, uses wordings such as “the right to *apply* for work in the public sector”⁶⁵; “the right to *apply* for a license to exercise a work, profession, industry...”⁶⁶. However, the right to acquire properties⁶⁷ in case of a permanent residency, and that of free education and medication are mentioned as full rights equal to Libyans⁶⁸. At a later stage, a law organizing the private sector (law no. 12 of 2001) envisaged a special status for Arabs and Africans, allowing them certain economic activities, to be determined by

⁶⁰ Bilateral agreement between Libya and Egypt dated 3. 12.1990. In relation to the acquirement by Egyptians of property and farms in Libya. Agreement between Libya and Tunisia in relation to the purchase of property, exercise of professions and craft, the right of residency, and movements, 6th of June 1973.

⁶¹ Egyptians are much more numerous than Tunisians, they are also closer to Libyans socially. Moreover, different memos of understandings were concluded between MTTE and its Egyptian counterpart.

⁶² Decisions no.456 of 1988, 238 of 1989, and 260 of 1989.

⁶³ Decision no. 602 of 1988, and decision no. 49 of 1990.

⁶⁴ no. 456 of 1988. “citizen Arab rights in Libya”.

⁶⁵ Decision no. 49 of 1990, article 4.

⁶⁶ Decision no. 49 of 1990, article 5.

⁶⁷ This right can be revoked if certain conditions apply, such as proven non allegiance to the revolution or a judgement of military desertion is issued against the immigrant, or if the immigrant has resided abroad for more then a year..... Article 9 of law no.49 of 1990.

⁶⁸ Ibid, article no. 6.

regulations issued by the GPC. However the regulations were issued, but no special status was accorded to either group⁶⁹.

This privileged status then was shaken up by certain measures. Since 2004, all GPC and MMTE decisions dealt with foreign workers as equals regardless of their origin. MMTE decision no. 1 of 2004 used the term ‘non-national foreign workers’, making all foreign workers equal and treating them, in general, on the same grounds. It refers, in article 7, to work priority for those coming from countries bound with bilateral or multilateral treaties and agreements with Libya, and in article 18 to Law no. 10 of 1989 related to the rights and obligations of Arabs in Libya. However, in the same article, it is also stated that all foreign workers are equal and that Consular registration and residency is required for all foreign workers, regardless of their origin. Therefore, this simple decision issued by the MMTE contradicts a more powerful law issued fifteen years ago which is still in force.

C. Status of workers from Africa

Workers of African origin, unlike Arabs, are regulated by GPC decision no. 403 of 2001, and not by the law.

This decision mentioned a special department within the MMTE for each *Shabbia*, and a limit on jobs in certain fields⁷⁰. It stipulates that non nationals should obtain a health card that proves that they are “clean of all illness and do not test positive for any virus”. Once a health card is obtained, they are given a work permit called a “non-transferable work permit”. They are also categorized as temporary workers⁷¹.

Despite the fact that this decision is still in force, as applied to Arab workers, workers of African origin have, since 2004, been considered part of the whole range of non-national workers in Libya and all other regulations issued since 2004 are applicable to them.

IV. Human rights principles in Libyan legislation with regard to non-national workers

This particular issue should be seen within the general context of human rights in the country, and not just from the perspective of foreign workers. For example, political rights can only be examined in terms of the rights of citizen. Only Arabs, in accordance with legislation in relation to Arab rights, have certain political rights: mainly the right to participate in the Basic People’s Committees⁷². These are organs where all Libyans, men and women, gather to discuss policy making, before submitting it to the General People’s Congress (Parliament). It is also stated that an Arab can be a member of the executive administrations, such as the ministries⁷³.

The GPC decision no. 49 of 1990 indicates that Arabs have the right to join unions⁷⁴. Law no. 23 in relation to unions does not reserve membership to Libyans. Moreover, law no. 19 of 2001, in relation

⁶⁹ GPC decision no.171 of 2006 relating to the regulation of law no. 21 of 2001, accords no special status either to Libyans, or to Africans. Law no. 21 of 2001 governing the private sector and its regulation, speaks only of nationals or foreigners, and nothing in between.

⁷⁰ Fields are: agriculture; building and construction; general cleaning.

⁷¹ In accordance with GPC decision no. 573 of 1987 relating to the regulation of law no. 1 of 1987 related to the law on temporary appointment, jobs are to be temporary and not permanent (Article 13).

⁷² Decision no. 49 of 1990, article 14.

⁷³ It is of public knowledge that an Egyptian citizen was appointed, in the past, as a Minister.

⁷⁴ Article 14.

to the organization of associations, is not reserved for Libyans only, and requires Libyan nationality only for those who are on the administrative board of the association⁷⁵.

Currently, the services of education and health for foreign workers in Libya, including Arabs and Africans, are not free. Up to two years ago, Arabs benefited from (free) public schools, and (free) public health on a par with Libyans. However, since the promulgation of GPC decision no. 98 of 2007, in which all foreigners were banned from public schools and clinics, the Ministry of Education issued decision no. 3 of 2007 which imposed a certain charge for public schools for non-Libyans including those whose mother is Libyan and father non-Libyan⁷⁶. In Libya there are various private foreign schools such as the Tunisian, African, French, and other Arabic private schools. They are considered expensive. It is worth mentioning that GPC issued a decision in 1986, (decision no. 49 of 1986) relating to health services for foreign nationals. Subsequent decisions gave Arab workers an exceptional status which was made use of. Since 2007, this exception narrowed. In reality, all foreign nationals enjoy free health services, including free medications. Payment is only required for a stay in public hospitals, and the fees are low. Measures in public hospitals for collecting charges from foreign nationals are not strict, and there is a measure of discretionary authority with a case-by-case decision valuation. Unpaid charges by foreign nationals are considered unpaid debts⁷⁷.

As stated above, only one GPC decision relates to workers of African origin. These workers did not enjoy as many rights as those of Arab origin under Libyan legislation. However, there are certain guarantees for these workers. These include the employer's responsibility for covering their medical charges and for providing appropriate group accommodation. However, these rights are considered weak, as there are no consequences if the employer violates such obligations. Contrary to human rights principles, article 3 of the said decision indicates that workers of African origin should undergo a medical check and obtain a health card indicating absence of any illness or viruses. The inappropriate wording of this should be emphasized. In reality, workers of African origin are treated like any other foreign workers in relation to the health card, and there are no discriminatory procedures for these migrants. But the wording⁷⁸ of the decision are of a discriminatory nature.

The situation of irregular migrants, working in the shadow economy, and in particular the relatively new private sector, paved the way for human rights abuses, especially in relation to salary, work conditions, and other work guarantees. It is apparent from recent legislation that there is a tendency to impose certain obligations on employers, to safeguard worker rights. These rights include the insistency on concluding a contract⁷⁹ and other measures to be carried out by employers in favour of foreign workers. The MMTE takes a firm position on the contract, and prepared a standard contract for all employers to fill out or to use as a guide line. It is then to be submitted to the ministry, after being stamped by the tax department. The other measures to be carried out proved to be ineffective as they had no consequences.

⁷⁵ Article 10 of the law's regulation in 2002.

⁷⁶ Azza K. MAGHUR, "A Libyan women of a second degree", www.libya-alyoum.com. After a complaint by a Libyan mother married to non-Libyan man, this decision was amended and if the mother proves that she cannot afford such charges, she can be exempted.

⁷⁷ Information is taken from several interviews with doctors and hospital administrators.

⁷⁸ It is obvious that the meaning is contagious diseases or viruses, special attention is to be given to HIV/ AIDS. The MMTE decision no. 223 of 2004 in relation to the non discrimination against Hepatitis virus carriers, concerning all workers or job seekers is not limited to Libyans and so proves this point.

⁷⁹ Decision no. 20 of 2007 (article1,2); decision no. 98 of 2007 (article 2); decision no. 98 of 2007 (article 2), decision no. 91 of 2006 (article 1)

V Conclusion

1. It appears from the above analysis that the core legislation of labour in Libya is labour law no. 58 of 1970. However, political and economic changes since 1979 based on new ideologies have limited its effect, as the public sector expanded at the expenses of the private one.
2. In 1988, while the public sector was still dominant in the labour market, Libya opened its doors to Arab workers who needed neither a visa, nor permission, to enter and work in Libya. The Labour law was still of limited value, and new legislation was issued for the purpose of regulating and organizing the new arrivals. Arabs gained and enjoyed a privileged status that made them, to a large extent, equal to Libyans. However, the wording of certain pieces of legislation along with the repetition of obligations such as military service and the modest salaries of the public sectors indicates that in order to benefit from such status, full integration within Libyan society was required.
3. The end of 1990 is characterized with the reactivation of the private sector, government attempts to reduce employees (including Libyans) in the public sector, and the tightening of any new job assignments in the public sector. There is strong demand for labour in the private sector, in addition to the open door policy, complicating the labour market, and no policy to regulate it through legislation made an impact at the time.
4. 1992-1999 saw UN sanctions, by which an air embargo was imposed. Traveling into and out of Libya was only allowed by land and sea. Libyan land borders with neighboring states (namely Tunisia and, to a lesser extent, Egypt) became busy and loose, allowing thousands in every day. This had an impact on the labour market, and worsened the situation on the ground by encouraging the movement of workers across the borders, and relaxing immigration measures. The political shift towards Africa increased the presence of irregular workers of African origin.
5. More and more regulations were issued all in the form of decisions by the executive authorities, the GPC and the MMTE. The latter expanded its authority and started to issue its own decisions, directives, letters, and warnings to both the public and private sector, along with foreign companies, about not allowing foreign workers to work in jobs reserved for Libyans.
6. Transit migrations to Europe, EU pressure on Libya, rising unemployment⁸⁰, social tension between Libyans and foreign nationals, in addition to claims attributing the rise of crime and disease to irregular migrants⁸¹, all led to a change in Libyan policy towards migration. Since 2004, legislation has mainly used one term, “non-nationals”, as opposed to “nationals”.
7. The legislation mentioned above might suggest that Libya did not have a clear policy on dealing with irregular migration. However, since 2004, a policy of regulation can be seen. Certain points can be deduced in that regard:
 - a. The new regulatory measures do not differ from old ones mentioned in previous legislation, such as the registration of foreign nationals, the health card, the work permit, etc.
 - b. Long procedures for the legalization of foreign workers are always closely tied to administrative entities. Libyan administration is known for being unstable and

⁸⁰ A couple of days ago, the MMTE, issued a directive, published on its website, ordering all public sector and foreign companies to lay off retired workers (over 65 years for men/ 60 years for women), and replace them with younger people. <http://www.smpt.gov.ly>.

⁸¹ See *Oea newspaper*, interview with the Governor of Ghat, south of Libya. See also an interview with Head of the Information Department. Ministry of Justice, *Oea newspaper*, 17.11.2009.

constantly changing⁸². It is also subject to removal, mergers and replacement. Thus an administration mentioned in one decision differs in another. Since decision no. 74 of 2006 which expanded the authority of the MMTE, this ministry became the holder of extensive powers in work and employment matters, and the sole administration in charge of regulating the status of workers in Libya.

- c. It can be observed that work and employment legislation is under systematic decision promulgation, and are inflationary in nature. Decisions are accumulative, and none of them are cancelled when new ones are issued. That is why decisions in relation to Arabs are still in force, though since 2004, decisions do not distinguish Arabs from other foreign workers. This attitude of “accumulative decisions” leads to the coexistence of different policies, confusing the labour market, and creating a foggy legal context.
 - d. Non-transparency in certain decision. An example is that after imposing work cards on foreign workers in 2004, suddenly in 2007 the MMTE issued a decision⁸³ stating that cards are to be “ineffective”. No explanation was given as to why. It is not even known what should replace such permits.
8. From the chronology shown above, it might be concluded that regulations since the end of 1980 are issued on the back of political decisions. This is to say, for example, that with regard to Arabs, boundaries were open, and then regulations were issued at a later stage. The same would apply to Africans. Therefore, legislation follows on after the situation on the ground has largely developed.
 9. Since 2004, it is clear that Libya is finding its way to a new outlook with regard to foreign workers. Essentially there are only two categories of workers: nationals and non-nationals, and there are no longer in between states. Whatever position Libya chooses today, Libya is still bound though by bilateral and regional treaties, in addition to internal legislation relating to specific workers, of specific origins, which remain in force. It is essential that the Libyan administration follow a ‘pick and choose’ policy with regard to this legislation which is still in force, and lay down one coherent policy, which should be reflected in coherent legislation.
 10. The new draft labour law is way ahead of the current law, and takes into consideration points and remarks raised by NGOs and the ILO, particularly in regard to deficiencies in current Libyan labour law including the exclusion of certain work categories such as housekeepers and farm workers from being regulated by labour law, the banning of the right to strike⁸⁴, the non-reference to collective negotiation before concluding collective contracts. However, this draft law does not reflect legislation in force related to labour. If such a draft law is to be endorsed as law, and if current legislation is to continue to be in force, then the same situation of diverse legislation will continue. It is important before promulgating the draft labour law, that there should either be harmonization with other legislation or that there is integration between labour law and the other decisions still in force.
 11. It seems from the latest decision issued by GPC⁸⁵ that Libya is not able to regulate its labour market alone. Lately, Libya is trying to involve other countries to conclude bilateral agreements with them, so that it can contain either legal or administrative means (such as Egypt), or technical and sophisticated means (such as Italy/EU) to regulate its labour market.

⁸² Administrations dealing with foreign workers change in several decisions. For example, in certain decisions it is special departments in municipalities (decision no.602 of 1988), in another, offices of manpower in Shaabiat (decision no. 403 of 2001), in yet another, an office of the MMTE (decision no. 98 of 2007).

⁸³ Decision no. 9 of 2007.

⁸⁴ The right to strike is mentioned in law no. 58 of 1970 in a limited way; however it was banned later by law no. 45 of 1972 relating to the Arab Social Union.

⁸⁵ GPC decision no. 98 of 2007.

12. It seems also that the excessive use of legislative means to regulate the market did not achieve the expected results. The fact that the MMTE has recently sent out letters and directives directly to companies, especially foreign ones, threatening “all legal measures” against companies breaching labour legislation (by hiring foreign nationals in posts reserved for Libyans), shows that the effectiveness of the legislation is limited.
13. The MMTE, notwithstanding its vast authority, cannot do much alone. The non-involvement of the private sector, which is a veritable beehive of irregular migration, and the complicated measures and bureaucracy of the administration, make it difficult to regulate the market. Involvement of the private sector is essential, and regulation in a “theoretical way” is not always the right way to start, as it never filters down, instead stopping on the desks of administrators.
14. The MMTE has a website, which it employs, in addition to access to local newspapers where it can make announcements. This is creating awareness, and eases access to information and updates. There is though a shortage in obtaining legislation and certain documents, such as contract forms online.
15. The Libyan administration has managed, since the 1980s, to control the public sector with regard to foreign workers. However, in the private sector where irregular workers are essential⁸⁶, it is still a long way from achieving this. As long as the private sector is not involved in such matters, it would be difficult to organize irregularity in the private sector.
16. Libya, with significant unemployment, and huge construction projects, is still in need of foreign workers. There are also jobs which Libyans refuse to do, such as street cleaning⁸⁷.
17. Libyan legislation has long been tainted by political influence. Today Libya is trying to regulate its labour market, it should, in the first place, lay down a clear strategy, organize its previous legislation, and firmly control the issuance of new legislation in a way that strictly respects its chosen strategy. The excessive use of letters, directives, and announcements of a threatening character will only lead to increasing administrative involvement, without much result on the ground. Incentives and encouragement, including facilitating regulatory procedures for irregular workers should be envisaged in the new strategy.

⁸⁶ According to Aljazeera net, dated 29.1.2007, the MMTE minister declared that in Libya there are 700,000 foreign workers, only 36,000 are regular, 60,000 are under the process of regularization; the rest are considered to be irregular. This declaration does not specify whether it relates to the private or public sectors or both. see <http://www.aljazeera.net/News/archive/archive?ArchiveId=1031161>

⁸⁷ See an interview with the GCO of Tripoli general services, in which he states that Libyans refuse to work in these jobs despite proposed high salaries and incentives. Oea newspaper dated 2.2. 2009
An article published in *Aljamaheryia newspaper* dated 15.2. 2009, page 16, shows that all street cleaners are foreign either of African or Arab origin